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United States District Court  
Central District Of California  
Western Division

12 DAVID SABINO QUAIR, II )  
13 Plaintiff, )  
14 v. )  
15 CALIFORNIA DEPARTMENT OF )  
16 CORRECTIONS AND )  
17 REHABILITATION - HQ. et al. )  
Defendants )  
CASE NO. 5:18-cv-02595-PSG-ADS  
ORDER DENYING, MOTION TO  
REASSIGN JUDGES GUTIERREZ  
AND SPAETH FOR  
OBSTRUCTION OF JUSTICE [DE-  
24].

On October 22, 2019 Plaintiff David Sabino Quair, II (“QUAIS”) filed a motion “to reassign United States District Judge Phillip S. Gutierrez and United States Magistrate Judge Autumn D. Spaeth for obstruction of justice.” That is the motion in its entirety. The motion does not allege the theory upon which the obstruction of justice charge is based. Consequently, the Court is left to guess the source of Mr. Quair’s discontent.

A review of the docket discloses the filing of 19 prisoner civil rights cases filed by Quair within a six month period. Those cases were ordered consolidated by Judge Gutierrez on July 11, 2019. In that order, Quair was ordered to file a single consolidated

1 complaint within 30 days or potentially suffer dismissal of his actions. [DE-18.]

2 In addition he has filed a number of puzzling motions seeking questionable relief,  
3 none of which have achieved the sought-after results. For example, he began by seeking  
4 an injunction to prevent CDCR from making him feel that his safety is threatened. [DE-2-  
5 2.] This was filed the very same day as his civil rights complaint.

6 Next came his “Motion to Grant an Order to Locate and Decide all Motions to All  
7 Districts of California United States District Court for All Petitions filed since November  
8 2018.” [DE-6.] Almost immediately upon the docketing of the Order denying the  
9 request for an injunction, he filed the instant motion for reassignment of the judges.  
10 Though it is not stated directly, one might surmise that he is dissatisfied with the rulings  
11 he has received.

12 There are two federal statutes enacted to assure that litigants receive a fair trial  
13 before an impartial judge. 28 U.S.C. § 144 provides: “Whenever a party to any  
14 proceeding in a district court makes and files a timely and sufficient affidavit that the  
15 judge before whom the matter is pending has a personal bias or prejudice either against  
16 him or in favor of any adverse party, such judge shall proceed no further therein, but  
17 another judge shall be assigned to hear such proceeding.”

18 “The affidavit shall state the facts and the reasons for the belief that bias or  
19 prejudice exists, and shall be filed not less than ten days before the beginning of the  
20 term at which the proceeding is to be heard, or good cause shall be shown for failure to  
21 file it within such time. A party may file only one such affidavit in any case. It shall be  
22 accompanied by a certificate of counsel of record stating that it is made in good faith.”

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24 The second statute is 18 U.S.C. § 455(a), where the standard for recusal is  
25 “whether a reasonable person with knowledge of all the facts would conclude the  
26 judge’s impartiality might reasonably be questioned.” *United States v. Studley*, 783 F.2d  
27 934, 939 (9<sup>th</sup> Cir. 1986). No affidavit is required. The motion at issue doesn’t

1 reference either statute. However, given the absence of an affidavit or even the  
2 suggestion that the matters stated in the motion are true, the court will treat the  
3 motion as proceeding under section 455.

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5       The statute provides in part “(a) Any justice, judge, or magistrate of the United  
6 States shall disqualify himself in any proceeding in which his impartiality might  
7 reasonably be questioned. (b) He shall also disqualify himself in the following  
8 circumstances: (1) Where he has a personal bias or prejudice concerning a party, or  
9 personal knowledge of disputed evidentiary facts concerning the proceeding; . . .”

10      The substantive standard for bias or prejudice is the same under §144 as it is  
11 under § 455(b)(1). Thus, courts have been rigorous in requiring a showing of personal  
12 bias as contrasted with general or judicial bias. The motion must state facts supporting  
13 the belief that bias exists. Accordingly, it must be definite as to the time, place, persons,  
14 and circumstances. [*Mims v. Shapp*, 541 F.2d 415, 417 (3d Cir. 1976) bias defined] Mere  
15 conclusory allegations do not suffice, [*Liteky v. U.S.*, 510 U.S. 540, 114 S.Ct. 1147(1994)]  
16 although the facts may be stated on information and belief. The facts stated “must give  
17 fair support to the charge of a bent of mind that may prevent or impede impartiality of  
18 judgment.” Here, we have no facts given which Quair believes warrants the  
19 disqualification of either judge.

20      Section 455(b)(1), like section 144, provides for recusal only where there is  
21 evidence of actual bias. Section 455(a) is somewhat broader in that it requires only a  
22 reasonable appearance of bias. However, both statutes require **proof of extrajudicial**  
23 **bias.**” *Sataki v. Broadcasting Bd. of Governors*, 733 F. Supp. 2d 54, 65 n.3 (D.D.C.  
24 2010)(emphasis original), citations omitted.

26      As is clear from a review of the four-line motion, the standards of neither 455 nor 144  
27 have been satisfied. As noted above, the request appears to have been prompted by a  
28 series of unfavorable rulings by the trial judge. Mere dissatisfaction with the ruling of

1 the trial judge is not a valid basis for recusal. Adverse decisions do not establish bias or  
2 even hint at bias. *Khor Chin Lim v. Courtcall Inc.*, 683 F.3d 378, 380 (7th Cir. 2012) (per  
3 Easterbrook, J.).

4                   Quair has not even attempted to demonstrate bias. Instead, he simply tosses out  
5 the phrase “obstruction of justice” which has received some notoriety of late, with the  
6 apparent hope the Court will rush to his aid to prevent such a grievous miscarriage of  
7 justice. Legal phrases are insufficient. The fact remains that Quair is required to state  
8 facts supporting the belief that bias exists. Those assertions must be definite as to the  
9 time, place, persons, and circumstances. [*Mims v. Shapp*, 541 F.2d 415, 417 (3d Cir.  
10 1976) bias defined] Mere conclusory allegations will not suffice. The facts stated “must  
11 give fair support to the charge of a bent of mind that may prevent or impede impartiality  
12 of judgment.” Thus, courts have been rigorous in requiring a showing of personal bias  
13 as contrasted with general or judicial bias. There has not been even the barest showing,  
14 must less evidence of actual bias, merely a disagreement with the court’s ruling. The  
15 request for reassignment is DENIED.

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17 IT IS SO ORDERED  
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21 DATED: November 6, 2019

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Otis D. Wright, II  
United States District Judge

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